

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107-4431

April 23, 1998

**VIA FEDERAL EXPRESS**

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1425 New York Avenue, N.W.  
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Washington D.C. 20005

RE: Atlantic Wood Industries, Inc. Superfund Site  
Administrative Order on Consent to Settle Past Response Costs

Dear Ed, Jeff, Ross, Mark, Monica and Bob:

I have enclosed a copy of the draft Administrative Order on Consent for Recovery of Past Response Costs ("Draft AOC") between Atlantic Wood Industries, Inc. ("AWII"), the U.S. Department of the Navy ("Navy"), and the U.S. Environmental Protection Agency, Region III ("EPA"). I thank Monica and Bob for their comments concerning EPA's relationship with other federal entities. As a result of these discussions, I inserted what is, for the most part, the most recent "model language" relating to the Navy's payment terms and EPA's ability to seek payment from the Judgment Fund should the Navy fail to pay in a timely manner.

Please note, however, that this draft has not yet been approved in its entirety by the Department of Justice. In particular, the following issues are still outstanding:

- (1) Timing of the Covenant Not to Sue - representatives of EPA and the Department of Justice are still in the process of discussing when the EPA's covenant not to sue the Navy and AWII becomes effective (paragraph 23).
- (2) Navy's Covenant Not to Sue EPA or the Superfund - at this time, the Navy has agreed to covenant not to sue EPA or seek reimbursement from the Superfund for the Past Response Costs (paragraph 26). However, representatives of EPA and the Department of Justice are still in the process of discussing this issue.

These are the outstanding issues. I am optimistic that we can work together to resolve these issues amicably.

We will need to finalize the AOC on an expedited schedule. If we do not have a final AOC signed by all parties by May 22, 1998, I will be obligated to refer this matter to the Department of Justice, as the statute of limitations on some of these costs is approaching. (Because AWII is receiving the draft AOC for the first time, I moved the deadline from May 15 to May 22, 1998.) Please contact me at 215-566-2615 by Wednesday April 29, 1998 so that we can set an aggressive schedule for negotiating and finalizing the AOC.

I look forward to hearing from you.

Sincerely,



Natalie L. Katz  
Assistant Regional Counsel

cc: Darlene Kelly (3HS12)  
Daria Arnold (3PM30)  
Steve Panza (3PM30)  
Diane Malancone (3PM30)  
Barbara Borden (3PM30)  
Ron Davis (3HS23)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

IN THE MATTER OF:

ATLANTIC WOOD INDUSTRIES, INC.  
SUPERFUND SITE

Atlantic Wood Industries, Inc.  
U.S. Department of the Navy,

Settling Parties

Proceeding under Section  
122(h)(1) of the Comprehensive  
Environmental Response,  
Compensation and Liability  
Act, as amended, ("CERCLA"),  
42 U.S.C. § 9622(h)(1)

Administrative Order on  
Consent for Recovery of  
Past Response Costs

U.S. EPA Region III  
CERCLA Docket No.  
III-98-014-DC

ADMINISTRATIVE ORDER ON CONSENT FOR RECOVERY OF PAST COSTS

DRAFT - April 23, 1998 11:45 a.m.

DRAFT - April 23, 1998

## TABLE OF CONTENTS

I.	JURISDICTION . . . . .	1
II.	BACKGROUND . . . . .	1
III.	PARTIES BOUND . . . . .	2
IV.	DEFINITIONS . . . . .	2
V.	REIMBURSEMENT OF RESPONSE COSTS . . . . .	4
VI.	FAILURE TO COMPLY WITH CONSENT ORDER . . . . .	5
VII.	COVENANT NOT TO SUE BY EPA . . . . .	6
VIII.	RESERVATIONS OF RIGHTS BY EPA . . . . .	6
IX.	COVENANT NOT TO SUE BY SETTLING PARTIES . . . . .	7
X.	EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION . . . . .	8
XI.	RETENTION OF RECORDS . . . . .	9
XII.	NOTICES AND SUBMISSIONS . . . . .	10
XIII.	INTEGRATION AND APPENDICES . . . . .	11
XIV.	PUBLIC COMMENT . . . . .	12
XV.	ATTORNEY GENERAL APPROVAL . . . . .	12
XVI.	EFFECTIVE DATE . . . . .	12

## I. JURISDICTION

1. This Administrative Order on Consent ("Consent Order") is entered into pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 6922(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D.

2. This Consent Order is made and entered into by EPA and by Atlantic Wood Industries, Inc. ("AWII") and the United States Department of the Navy ("Navy"). (Collectively, AWII and the Navy will be referred to as the "Settling Parties".) Each Settling Party consents to and will not contest EPA's jurisdiction to enter into this Consent Order or to implement or enforce its terms.

## II. BACKGROUND

3. This Consent Order concerns the Atlantic Wood Industries, Inc. Superfund Site ("Site") located in Portsmouth, Virginia. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA and AWII entered into an Administrative Order by Consent in July 1987, and amended this document by entering into a First Amendment to the Administrative Order by Consent in July 1994 (U.S. E.P.A. Docket No. 87-24-DC). In these Administrative Orders, AWII agreed to perform a Remedial Investigation/Feasibility Study ("RI/FS") at the Site, remove a portion of the contaminated soil at the Site, and reimburse EPA for its oversight costs and other response costs.

5. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. Among other things, EPA provided oversight for AWII's performance of the RI/FS and removal of contaminated soil from the Site.

6. In performing these response actions, EPA incurred oversight costs and other response costs at or in connection with the Site.

7. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

8. EPA and Settling Parties desire to resolve Settling Parties' alleged civil liability for Past Response Costs without litigation and without the admission or adjudication of any issue of fact or law.

### III. PARTIES BOUND

9. This Consent Order shall be binding upon EPA and upon Settling Parties and their successors and assigns. Any change in name, ownership or corporate or other legal status of AWII, including but not limited to, any transfer of assets or real or personal property, shall in no way alter AWII's responsibilities under this Consent Order. Any change in name or other legal status of the Navy, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the Navy's responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to bind legally the party represented by him or her.

### IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Consent Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Order or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

b. "Consent Order" shall mean this Consent Order and any attached appendices. In the event of conflict between this Consent Order and any appendix, the Consent Order shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on

October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

f. "Paragraph" shall mean a portion of this Consent Order identified by an arabic numeral or a lower case letter.

g. "Parties" shall mean EPA and the Settling Parties.

h. "Past Response Costs" shall mean (1) RI/FS and Removal Oversight/Response Costs that EPA has paid at or in connection with the Site from July 23, 1987 through July 31, 1996, and (2) all other non-oversight response costs that EPA has paid at or in connection with the Site from October 22, 1984 through July 21, 1995. These costs are reflected on the Cost Reports attached as Appendix A and include:

- (1) Report dated 12/11/95, reflecting non-oversight response costs (from 10/22/84 through 7/21/95)
- (2) Report dated 1/29/96, reflecting RI/FS and Removal Oversight/Response Costs (from AOC 7/23/87 through Amended AOC 8/7/94)
- (3) Report dated 1/29/96, reflecting RI/FS Oversight/Response Costs (from Amended AOC 8/7/94 through 7/26/95)
- (4) Report dated 1/29/96, reflecting Removal Oversight/Response Costs (from Amended AOC 8/7/94 through 7/7/95)
- (5) Report dated 10/2/96, reflecting Removal Oversight/Response Costs (from 7/8/95 through 7/31/96)
- (6) Report dated 10/8/96, reflecting RI/FS Oversight/Response Costs (from 8/1/95 through 7/31/96)

The costs reflected on these cost reports add up to \$1,133,287.51, and consist of \$890,598.75 in Removal and RI/FS Oversight Costs and \$242,688.76 in other past response costs not related to oversight.

i. "Section" shall mean a portion of this Consent Order identified by a roman numeral.

j. "Settling Parties" shall mean Atlantic Wood Industries, Inc. and the U.S. Department of the Navy.

k. "Site" shall mean the Atlantic Wood Industries, Inc. Superfund Site, encompassing approximately 48 acres, located

in Portsmouth Virginia, and roughly depicted on the map included in Appendix B.

1. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

11. The Settling Parties shall pay to the EPA Hazardous Substance Superfund \$864,000 in reimbursement of Past Response Costs, as defined in Paragraph 10.h. This sum includes \$700,000 reimbursement for Removal and RI/FS Oversight/Response Costs and \$164,000 reimbursement for other non-oversight response costs. AWII and the Navy have agreed among themselves that they will each pay 50% of the \$864,000.

12. Within 30 days of the effective date of this Consent Order, AWII shall pay to the EPA Hazardous Substances Superfund \$432,000 [DISCUSSIONS ABOUT PAYMENT TERMS PENDING]. Payments shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 03-L2, and the EPA docket number for this action, and shall be sent to:

EPA Hazardous Substances Superfund  
U.S. Environmental Protection Agency, Region III  
Attn: Superfund Accounting  
P.O. Box 360515  
Pittsburgh, PA 15251-6515

13. As soon as reasonably practicable, the United States, on behalf of the Navy, shall pay to the EPA Hazardous Substance Superfund \$432,000. Payments shall be made either by Electronic Funds Transfer or by a certified or cashier's check made payable to "EPA Hazardous Substances Superfund." Each check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 03-L2, and the EPA docket number for this action, and shall be sent to:

EPA Hazardous Substances Superfund  
U.S. Environmental Protection Agency, Region III  
Attn: Superfund Accounting  
P.O. Box 360515  
Pittsburgh, PA 15251-6515

In the event that payment on behalf of the Navy is not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise the issue of non-payment to the appropriate Department of Justice ("DOJ") Assistant Section Chief



for the Environmental Defense Section. In any event, if this payment is not made within 120 days after the effective date of this Consent Order, EPA and DOJ have agreed to resolve the issue within 30 days.

14. At the time of payment, each Settling Party shall send notice that such payment has been made to:

Natalie L. Katz (3RC22)  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, PA 19107

Ronnie M. Davis (3HS23)  
Remedial Project Manager  
U.S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, PA 19107

15. EPA and Settling Parties recognize and acknowledge that payment obligations of the Navy under this Consent Order can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Order shall be interpreted or construed as a commitment or requirement that the Navy obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

#### VI. FAILURE TO COMPLY WITH CONSENT ORDER

16. In the event that AWII fails to make any payment required by Paragraph 12 when due, Interest on the unpaid balance shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and shall accrue from the first day the payment is overdue until the obligation is paid in full.

17. In the event that the Navy fails to make the payment required by Paragraph 13 within 30 days of the effective date of this Consent Order, Interest on the unpaid balance shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and shall accrue from the effective date of this Consent Order until the obligation is paid in full.

18. If any amounts due to EPA by AWII under Paragraph 12 are not paid by the required date, AWII shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 16, \$2,000 per violation per day that such payment is late.

19. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments

to EPA under this Paragraph shall be identified as "stipulated penalties" and shall made in accordance with the payment procedures in Paragraph 12.

20. Penalties shall accrue as provided above regardless of whether EPA has notified AWII of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity.

21. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Order.

22. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of AWII's failure to comply with the requirements of this Consent Order, if AWII fails or refuses to comply with any term or condition of this Consent Order, AWII shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action against AWII to enforce this Consent Order, AWII shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

#### VII. COVENANT NOT TO SUE BY EPA

23. Except as specifically provided in Paragraph 24 (Reservations of Rights by EPA), EPA covenants not to sue AWII pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or take administrative action against the Navy pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), to recover Past Response Costs, as defined in this Consent Order. [THE TIMING OF THIS COVENANT IS STILL UNDER DISCUSSION.] This covenant not to sue extends only to Settling Parties and does not extend to any other person.

#### VIII. RESERVATIONS OF RIGHTS BY EPA

24. The covenant not to sue by EPA set forth in Paragraph 23 does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Consent Order is without prejudice to, all rights against Settling Parties with respect to all other matters, including but not limited to:

a. claims based on a failure of AWII or the Navy to meet a requirement of this Consent Order;

b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

d. criminal liability; and

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

25. Nothing in this Consent Order is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Consent Order.

#### IX. COVENANT NOT TO SUE BY SETTLING PARTIES

26. Settling Parties agree not to assert any claims or causes of action, or take administrative action against EPA or its contractors or employees, or make any claim against the EPA Hazardous Substance Superfund, with respect to Past Response Costs or this Consent Order, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred; and

c. any claim against EPA pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

27. Nothing in this Consent Order shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

[INCLUDE COVENANT NOT TO SUE BY AND BETWEEN AWII AND THE NAVY?]

#### X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

28. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Order. EPA and Settling Parties each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

29. EPA and Settling Parties agree that the actions undertaken by Settling Parties in accordance with this Consent Order do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the facts or allegations contained in Section II of this Consent Order.

30. The Parties agree that Settling Parties are entitled, as of the effective date of this Consent Order, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Consent Order. The "matters addressed" in this Consent Order are Past Response Costs.

31. Each Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Order, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Order, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Order.

32. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the

enforceability of the covenant not to sue by EPA set forth in Paragraph 23.

#### XI. RETENTION OF RECORDS

33. Until ten years after the effective date of this Consent Order, AWII shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

34. The Navy is subject to and agrees to comply with all applicable federal record retention laws, regulations, and policies.

35. After the conclusion of the document retention period in Paragraphs 33 and 34, Settling Parties shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Settling Parties shall deliver any such records or documents to EPA. Settling Parties may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to EPA in redacted form to mask the privileged information only. Settling Parties shall retain all records and documents that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Parties' favor.

36. By signing this Consent Order, each Settling Party certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or

agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Party regarding the Site.

## XII. NOTICES AND SUBMISSIONS

37. Whenever, under the terms of this Consent Order, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Order with respect to EPA and Settling Parties.

### As to EPA:

Natalie Katz (3RC22)  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, PA 19107

Ronnie M. Davis (3HS23)  
Remedial Project Manager  
U.S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, PA 19107

Chief, Environmental Enforcement Section  
U.S. Department of Justice  
Environment and Natural Resources Division  
P.O. Box 7611  
Washington D.C. 20044-7611  
Re: DOJ # \_\_\_\_\_

As to AWII:

Jeffrey Smigel  
Ross Worsham  
Atlantic Wood Industries, Inc.  
P.O. Box 1608  
Savannah, Georgia 31402

Edward A. Kurent  
P.O. Box 798  
Hatteras, N.C. 27943

As to the Navy:

Jeff Kidwell (Code 18238)  
Commander Atlantic Division  
Naval Facilities Engineering Command  
1510 Gilbert Street  
Norfolk, VA 23511-2699

Mark Kallenbach (Code 09CF)  
Commander Atlantic Division  
Naval Facilities Engineering Command  
Office of Counsel  
1510 Gilbert Street  
Norfolk, VA 23511-2699

Chief, Environmental Defense Section  
U.S. Department of Justice  
Environment and Natural Resources Division  
P.O. Box 23986  
L'Enfant Plaza Station  
Washington D.C. 20026-3986  
Re: DOJ # \_\_\_\_\_

XIII. INTEGRATION AND APPENDICES

38. This Consent Order and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Order. The following appendices are attached to and incorporated into this Consent Order:

Appendix A - Cost Reports which reflect the Past Response Costs

Appendix B - Map containing the AWII property portion of the Site

#### XIV. PUBLIC COMMENT

39. This Consent Order shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper or inadequate.

#### XV. ATTORNEY GENERAL APPROVAL

40. The Attorney General or her designee has approved the settlement embodied in this Consent Order in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

#### XVI. EFFECTIVE DATE

41. The effective date of this Consent Order shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 39 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Consent Order.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: \_\_\_\_\_

Date: \_\_\_\_\_

W. Michael McCabe  
Regional Administrator  
U.S. Environmental Protection Agency, Region III  
841 Chestnut Building  
Philadelphia, PA 19107



THE UNDERSIGNED SETTLING PARTY enters into this Consent Order in the matter of U.S. EPA Region III CERCLA Docket No. III-98-014-DC, relating to the Atlantic Wood Industries, Inc. Superfund Site:

ATLANTIC WOOD INDUSTRIES, INC.

By: David Bryce, President  
Atlantic Wood Industries, Inc.  
Sugar Refinery Road  
Port Wentworth, Georgia 31407

Date: \_\_\_\_\_

THE UNDERSIGNED SETTLING PARTY enters into this Consent Order in the matter of U.S. EPA Region III CERCLA Docket No. III-98-014-DC, relating to the Atlantic Wood Industries, Inc. Superfund Site:

UNITED STATES DEPARTMENT OF THE NAVY

By: Mark Kallenbach (Code 09CF)  
Commander Atlantic Division  
Naval Facilities Engineering Command  
Office of Counsel  
1510 Gilbert Street  
Norfolk, VA 23511-2699

Date: \_\_\_\_\_

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107-4431

## FAX COVER SHEET

DATE: April 23, 1998

TO:

FAX NUMBER:

Mark Kallenbach  
Naval Facilities  
Engineering Command

757-322-4825

Monica Schwebs / ~~Patricia~~  
U.S. Department of Justice  
Environmental Defense Section

202-514-~~2584~~  
8865

Robert Lefevre / ~~Patricia~~  
U.S. Department of Justice  
Environmental Enforcement Section

202-616-6583

cc: Ben Lamie + 202-501-0269  
John Wheeler

FROM:

Natalie L. Katz  
U.S. Environmental Protection Agency  
Office of Regional Counsel  
PHONE: 215-566-2615  
FAX: 215-566-2603  
E-Mail: katz.natalie@epamail.epa.gov

NUMBER OF PAGES: <sup>6</sup> ~~5~~ (Including this cover sheet)

MESSAGE: Monica,

I received your mark-up. Thanks for catching that cross reference (in #25).

As to the suggested changes where you replaced "Settling Parties" w/ "AWI" - These provisions apply to both AWI and the Navy. I thought that we had resolved this issue during our last call w/ Mark.

Let's talk on Monday. - Natalie



1998 APR 23 PM 1:51

S0C

**IMPORTANT:** This facsimile is intended only for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law. If the reader of this transmission is not the intended recipient or the employee or agent responsible for delivering the transmission to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this transmission or its contents is strictly prohibited. If you have received this transmission in error, please notify us by telephoning and return the original transmission to us at the address given below.

**FROM:** Department of Justice  
Environment and Natural Resources Division  
Service Operation Center  
601 D Street, N.W.  
Room 8515  
Washington D.C. 20004

Fax No. 202-514-8865  
Voice No. 202-514-3747

**SENT BY:** Monica Schwab

**TO:** Natalie Katz

**FAX No.** 215-566-2603

**NUMBER OF PAGES SENT (INCLUDING COVER PAGE):** 5

**SPECIAL INSTRUCTIONS:** Additional changes to AOC —  
to conform to model language

18 (Stipulated Penalty for Late Payment). This covenant not to sue is conditioned upon the satisfactory performance by both Settling Parties of their obligations under this Consent Order. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

**VIII. RESERVATIONS OF RIGHTS BY EPA**

24 25. The covenant not to sue by EPA set forth in Paragraph 25 does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Consent Order is without prejudice to, all rights against Settling Parties with respect to all other matters, including but not limited to:

a. claims based on a failure of AWII or the Navy to meet a requirement of this Consent Order;

b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

d. criminal liability; and

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

26. Nothing in this Consent Order is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Consent Order.

**IX. COVENANT NOT TO SUE BY SETTLING PARTIES**

27. Settling Parties agree not to assert any claims or causes of action, or take administrative action against EPA or its contractors or employees, or make any claim against the EPA Hazardous Substance Superfund, with respect to Past Response Costs or this Consent Order, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of

DRAFT - April 23, 1998

7

CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred; and

c. any claim against EPA pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

28. Nothing in this Consent Order shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d). ~~AWI-NAVY PROVISIONS RELATING TO, E.G., CREDITING OF OVER/UNDER PAYMENT AND [INCLUDE COVENANT NOT TO SUE BY AND BETWEEN AWI AND THE NAVY]~~

#### X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

29. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Order. EPA and Settling Parties each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

30. EPA and Settling Parties agree that the actions undertaken by Settling Parties in accordance with this Consent Order do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the facts or allegations contained in Section II of this Consent Order.

31. The Parties agree that Settling Parties are entitled, as of the effective date of this Consent Order, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Consent Order. The "matters addressed" in this Consent Order are Past Response Costs.

32. Each ~~Settling Party~~ <sup>AWI</sup> agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Order, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each ~~Settling Party~~ <sup>AWI</sup> also agrees that, with respect to any suit or claim for contribution brought against it for matters related to

DRAFT - April 23, 1998

8

AWI this Consent Order, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, each ~~Settling Party~~ shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Order. MWI

33. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, ~~Settling Parties~~ shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Paragraph 24.

#### XI. RETENTION OF RECORDS

34. Until ten years after the effective date of this Consent Order, AWI shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

35. The Navy is subject to and agrees to comply with all applicable federal record retention laws, regulations, and policies.

AWI  
36. After the conclusion of the document retention period in the paragraphs 34 and 35, ~~Settling Parties~~ shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, ~~Settling Parties~~ shall deliver any such records or documents to EPA. ~~Settling Parties~~ may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If ~~Settling Parties~~ assert such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the

DRAFT - April 23, 1998

United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to EPA in redacted form to mask the privileged information only. ~~Settling Parties~~ <sup>AWI</sup> shall retain all records and documents that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in ~~Settling Parties'~~ <sup>AWI's</sup> favor.

37. By signing this Consent Order, ~~each Settling Party~~ <sup>AWI</sup> certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against ~~the Settling Party~~ <sup>(AWI)</sup> regarding the Site.

## XII. NOTICES AND SUBMISSIONS

38. Whenever, under the terms of this Consent Order, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Order with respect to EPA and Settling Parties.

As to EPA:

Natalie Katz (3RC22)  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, PA 19107

DRAFT - April 23, 1998